

# Order

Michigan Supreme Court  
Lansing, Michigan

December 23, 2015

Robert P. Young, Jr.,  
Chief Justice

151941

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 151941  
COA: 326839  
Saginaw CC: 14-039688-FC

DEMARCUS EDWARD ALLEN,  
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 21, 2015 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the Saginaw Circuit Court's order denying the defendant's motion for plea withdrawal and we REMAND this case to the Saginaw Circuit Court for reconsideration of the defendant's motion to withdraw his plea. The defendant filed his motion before he was sentenced. MCR 6.310(B) permits the defendant to withdraw his plea before sentencing if withdrawal is in the interest of justice, unless withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. MCR 6.310(B)(1); see also *People v Jackson*, 203 Mich App 607, 611-612 (1994). The trial court applied an erroneous legal standard when it concluded that there was no legal basis for the court to allow the defendant to withdraw his plea unless there was a defect in the plea-taking process. See *People v Spencer*, 192 Mich App 146, 150-151 (1991) ("Under MCR 6.310(B), the use of the term 'may' denotes that the trial court has discretion to allow the withdrawal of the plea before sentencing if withdrawal is in the interest of justice and the withdrawal does not substantially prejudice the prosecutor because of reliance on the plea."). Cf MCR 6.310(C); *People v Brown*, 492 Mich 684, 693 (2012) ("A defendant seeking to withdraw his or her plea after sentencing must demonstrate a defect in the plea-taking process.").

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 23, 2015

  
Clerk